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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

DEBORAH TODD,

Plaintiff and Appellant,

v.

ANDREW HOFFMAN,

Defendant and Respondent.

A151015

(Marin County
Super. Ct. No. FL1600516)

Plaintiff Deborah Todd appeals the trial court’s denial of her request for renewal of a domestic violence restraining order (DVRO) against her ex-husband, defendant Andrew Hoffman. Todd argues the trial court abused its discretion by applying the wrong legal standard to conclude Hoffman’s conduct did not constitute “abuse” within the meaning of the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.).¹ We conclude the trial court applied the correct standard when it found that Todd did not demonstrate a reasonable fear of future abuse by Hoffman, and the court’s exercise of discretion in this regard did not exceed the bounds of reason. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2015, Todd moved out of the home she shared with Hoffman because she claims she was in fear of her life after experiencing persistent abuse from Hoffman. In December 2015, while Todd and Hoffman were in the middle of divorce proceedings,

¹ All further statutory references are to the Family Code unless otherwise stated.

Todd filed a request for a DVRO in the Napa County Superior Court, but the request was denied.

On February 9, 2016, Todd filed a request for a DVRO in the Marin County Superior Court. In support of the request, Todd submitted documents purporting to show harassment, threatening emails and texts, and physical and emotional abuse by Hoffman. According to Todd, in September 2015, Hoffman verbally and emotionally abused her, held her hostage in a room, and body slammed her into the door jamb when she attempted to escape. Hoffman also allegedly sent her communications threatening to kick her out of the house, harm her cats, and get rid of her property; tampered with and changed her passwords on various accounts; and engaged in hostile and erratic behavior. Hoffman did not oppose the request because he claims he was ill at the time.

On February 24, 2016, the trial court issued a DVRO against Hoffman, finding the record “amply” showed the requisite level of abuse by Hoffman to justify the order. The court ordered Hoffman, among other things, not to harass, attack, threaten, follow, destroy property, disturb the peace, surveil, or block the movements of Todd. Hoffman was further ordered not to contact Todd, either directly or indirectly, by any means, including telephone, mail, email or other electronic means, and to stay at least 100 yards from her, her home and her vehicle. The DVRO was set to expire on February 23, 2017.

On February 25, 2016, Hoffman sent Todd two text messages and an email regarding the removal of her property from the house. Todd filed a police report with the Marin County Sheriff’s office. When Todd arrived at the home to move her personal property, she found that Hoffman had left much of her property on the garage floor and disposed of other valued items including clothing, furniture, gardening items, and plants.

Todd further claims that Hoffman arranged to have his mailings, including his monthly car statement, alumni magazine, and other correspondences, sent to Todd’s postal office box every month for a year.

In June 2016, someone using the Facebook account for Hoffman’s girlfriend, Julie Green, attempted to tag a photograph on Todd’s Facebook page. The photograph was from Todd and Hoffman’s wedding.

On or about January 26, 2017, Hoffman encountered Todd while she was leaving the San Anselmo Post Office. Todd was in a car at the time, and Hoffman positioned himself visibly at the curb between two cars parked across the street, and stared, grinned and waved at Todd as she drove away.

In February 2017, Todd learned that her address with Health and Human Services (HHS) had been changed to an address that she believed belonged to Green. According to Todd, her Social Security number was needed to make this change, and Hoffman knew her Social Security number.

On February 6, 2017, Todd filed a request to renew the DVRO. Hoffman filed a response to the renewal request, and a hearing was held on February 22, 2017. After the matter was submitted, the trial court remarked that it had previously issued the DVRO “with some reluctance because, at the time, [the court] felt . . . like the parties were getting divorced in Napa County, and the Napa court was in a much better position to evaluate issues relating to domestic abuse than this court was,” but because the parties lived in Marin County, the court had jurisdiction. The court found that Hoffman committed a “technical violation” of the DVRO by contacting Todd the day after its issuance, but concluded “[i]t was poor judgment. Was it domestic abuse? Certainly not.” The court further found that as to the letters sent to Todd’s post office box, “nowhere in the Family Code are you going to find letters being sent to a Post Office box is domestic abuse.” While the court found the change of Todd’s address on her HHS account to be “troubling,” the court noted that there was no evidence Hoffman did this. As to the encounter at the San Anselmo Post Office, the court concluded this was “an unreasonable citation of domestic abuse” because Hoffman lives in San Anselmo and has the right to move about the community. The court said Hoffman probably should not have waved to Todd, but “Is that domestic abuse? Absolutely not.”

The court concluded that Todd had not met “our low standards for continuing restraining orders” and “has some issues of her own. [¶] I believe that she, in her mind, is fearful of Mr. Hoffman. That fear is not reasonable. If she has reason to seek a CLETS restraining order, I’m telling her right now, go to the divorce court in Napa and

seek it, and I hope you all get your divorce done soon. I think it will be helpful for both of you.”² The minute order of the hearing states that Todd’s request to renew the DVRO was denied because “[t]he conduct alleged by petitioner is not domestic abuse.”

Todd appealed.

DISCUSSION

Todd argues the trial court did not apply the correct legal standard in evaluating whether Hoffman’s conduct met the definition of “abuse” under the DVPA. She contends that abuse is not limited to physical abuse, and Hoffman’s conduct—including his sending of emails and text messages in violation of the DVRO, routing his mailings to her home, directing his girlfriend to interact with Todd’s social media account, and directly interacting with Todd at the post office—disturbed her mental and emotional calm and constituted domestic abuse to support renewal of the DVRO.

A. *Standard of Review*

“Generally, a trial court has broad discretion in determining whether to grant a petition for a restraining order under” the DVPA. (*In re Marriage of Fregoso & Hernandez* (2016) 5 Cal.App.5th 698, 702.) “However, ‘the exercise of discretion is not unfettered in such cases. [Citation.] All exercises of discretion must be guided by applicable legal principles, however, which are derived from the statute under which discretion is conferred. [Citations.] If the court’s decision is influenced by an erroneous understanding of applicable law or reflects an unawareness of the full scope of its discretion, the court has not properly exercised its discretion under the law. [Citation.] Therefore, a discretionary order based on an application of improper criteria or incorrect legal assumptions is not an exercise of informed discretion and is subject to reversal. [Citation.] ‘[Citation.] The question of whether a trial court applied the correct legal

² CLETS refers to the Department of Justice’s computer system, known as the California Law Enforcement Telecommunications System, which contains reported criminal history information. “[T]he Department’s entry into CLETS of criminal information it receives . . . simply involves a transfer of information from one form of storage—the disposition reports—to another—the CLETS database.” (*Bhatt v. Department of Health Services for State* (2005) 133 Cal.App.4th 923, 930–931.)

standard to an issue in exercising its discretion is a question of law [citation] requiring de novo review.’ ” (*Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 820–821.)

B. *The Trial Court Applied the Correct Legal Standard.*

Under the DVPA, a restraining order may be issued, with or without notice, to restrain any person for the purpose of preventing acts of domestic violence, abuse, and sexual abuse if the evidence before the court shows reasonable proof of a past act or acts of abuse. (§ 6300.) “Abuse” within the meaning of the DVPA means any of the following: “(1) To intentionally or recklessly cause or attempt to cause bodily injury. [¶] (2) Sexual assault. [¶] (3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another. [¶] (4) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.” (§ 6203, subd. (a).) “Abuse is not limited to the actual infliction of physical injury or assault.” (*Id.*, subd. (b).)

After a DVRO has been issued, it “may be renewed, upon the request of a party, either for five years or permanently, *without a showing of any further abuse since the issuance of the original order*, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party.” (§ 6345, subd. (a), italics added.)

In *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275 (*Ritchie*), the Court of Appeal held that a protected party “is not entitled to a renewal merely because she (or he) desires one. Section 6345 does not provide the trial court *shall* automatically renew the existing protective order if the protected party *requests*. By its terms, section 6345 only states the trial court *may* do so in the proper exercise of its discretion. In this court’s view, that exercise of discretion requires an inquiry beyond whether the protected party requested a renewal and entertains a subjective desire the protective order continue.” (*Ritchie, supra*, p. 1284.) The *Ritchie* court concluded that “an objective test must be satisfied before a protective order is renewed in contested cases. . . . A trial court should renew the protective order, if, and only if, it finds by a preponderance of the evidence that the protected party entertains a ‘reasonable apprehension’ of future abuse. So there should be no misunderstanding, this does not mean the court must find it is more likely than not

future abuse will occur if the protective order is not renewed. It only means the evidence demonstrates it is more probable than not there is a sufficient risk of future abuse to find the protected party's apprehension is genuine and reasonable." (*Id.* at p. 1290.)

In the instant matter, the trial court made several statements that could be viewed as suggesting Todd was required to prove that Hoffman's conduct rose to the level of abuse under the DVPA in order to obtain renewal of the DROV. The trial court cited each alleged example of Hoffman's conduct and remarked that they were not "domestic abuse," and the minute order likewise stated that the conduct alleged by Todd was "not domestic abuse." These statements, if viewed in isolation, would support the inference that the trial court did not apply the correct legal standard. That is, Todd was not required to show further abuse within the meaning of the DVPA in order to obtain renewal. (§ 6345, subd. (a).)

Todd was, however, required to demonstrate by a preponderance of the evidence that she had a reasonable apprehension of future abuse. (*Ritchie, supra*, 115 Cal.App.4th at p. 1290.) Along these lines, the trial court pointedly remarked that although it believed Todd was fearful of Hoffman, "[t]hat fear is not reasonable." This statement demonstrated the court's application of the correct legal standard under *Ritchie* that Todd's apprehension of future abuse had to be objectively reasonable.

C. The Trial Court Did Not Abuse Its Discretion in Finding that Todd Lacked a Reasonable Fear of Future Abuse.

Discretion is abused when the trial court's decision "exceeds the bounds of reason, all of the circumstances before it being considered." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566; see *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773 ["A ruling that constitutes an abuse of discretion has been described as one that is 'so irrational or arbitrary that no reasonable person could agree with it' "].) " 'When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420 (*Gonzalez*).)

Todd understandably emphasizes the fact that Hoffman violated the DRVO the day after it issued. “It almost goes without saying that any violation of a restraining order is very serious, and gives very significant support for renewal of a restraining order.” (*Lister v. Bowen* (2013) 215 Cal.App.4th 319, 335.) Still, we must view the trial court’s consideration of this matter in context. The text and email communications Hoffman sent Todd the day after the DRVO issued were brief statements offering her the help of a third party for the removal of her property that was still at the house, which she was already planning to remove. The record does not indicate what became of the police report that Todd filed in connection with this incident, and it appears Hoffman made no further attempt to directly contact Todd through phone calls, text messages or emails after this incident. On this record, the trial court did not exceed the bounds of reason in concluding that Hoffman’s technical violation of the DVRO in this context did not support a reasonable apprehension of future abuse.

Regarding the mailings sent to Todd’s post office box and the attempt by Green (or someone using her account) to tag a photograph on Todd’s Facebook page, Hoffman claimed he was unaware that his mail was being routed to Todd’s post office box, and that he had nothing to do with the Facebook incident. In this regard, the trial court was faced with a basic credibility determination. We do not reweigh the evidence or reassess credibility determinations in considering whether the trial court abused its discretion. (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 883–884 (*Ellis*).)

Regarding the changing of Todd’s address for HHS benefits, Hoffman claimed that he did not know what benefits Todd received, did not know her Social Security number, and suggested it was Todd herself who changed the address, “perhaps in preparation for this hearing.” The trial court was thus presented with a serious accusation by Todd and a counter-accusation by Hoffman that Todd had fabricated the claim. Again, in this circumstance, we do not reweigh the evidence, reassess credibility, or substitute our decision for the trial courts. (*Ellis, supra*, 218 Cal.App.4th at pp. 883–884; *Gonzalez, supra*, 156 Cal.App.4th at p. 420.)

Finally, as for the encounter at San Anselmo Post Office, there was no evidence suggesting that Hoffman followed or stalked Todd, blocked her movements, or intentionally tried to get within 100 yards of her. Todd acknowledged that Hoffman lived in San Anselmo, and Hoffman testified that he simply waved to her out of instinct. It was within the bounds of reason for the trial court to view this as a minor incident that did not provide significant support for renewal of the DVRO.

In summary, given the deferential standard of review applicable here, we cannot say the trial court abused its discretion in concluding that Todd failed to show by a preponderance of the evidence that she entertained a reasonable apprehension of future abuse to support renewing the DVRO. (*Ritchie, supra*, 115 Cal.App.4th at p. 1290.)

DISPOSITION

The order denying Todd's request for renewal of the DVRO is affirmed. In the interests of justice, each party shall bear its own costs on appeal.

Fujisaki, J.

We concur:

Siggins, P.J.

Jenkins, J.

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